

YAVAPAI COUNTY ATTORNEY'S OFFICE
JOSEPH C. BUTNER SBN 005229
DEPUTY COUNTY ATTORNEY
255 East Gurley Street
Prescott, AZ 86301
Telephone: 928-771-3344
ycao@co.yavapai.az.us

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 FEB 26 PM 1:10

JEANNE HICKS, CLERK ✓

BY: Heather Figueroa

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S SUPPLEMENTAL
MEMORANDUM RE: DEFENDANT'S
MOTION TO PRECLUDE LATE
DISCLOSED EVIDENCE, WITNESSES
AND EXPERTS AND TO DISMISS
DEATH PENALTY AS SANCTION

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Supplemental Memorandum Regarding Defendant's Motion to Preclude Late Disclosed Witnesses. Evidence, and Experts and to Dismiss the Death Penalty as a Sanction. This Memorandum is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The State again reminds the defense team and the Court that it is currently investigating and will continue to investigate every unsolved aspect of this case. As stated in a previous response to one of Defendant's numerous motions to preclude evidence, to do otherwise would

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 be a blatant disregard for the duties and obligations accorded to the County Attorney's Office
2 by the State of Arizona for the fair administration of the law and to insure that justice is done.

3 *Ariz. R. Crim. P.*, Rule 15.6(a) mandates that each party has a continuing duty to make
4 additional disclosure of new or different information as it is discovered. The State is doing its
5 level best to comply with that mandate. In recent days, new evidence has surfaced. With the
6 discovery of new evidence comes the need for additional witnesses and experts. Moreover, the
7 State has worked as diligently as possible to disclose previously requested information, new
8 evidence and/or recently approved reports from law enforcement often making disclosure
9 within hours of receipt of the documents. On numerous occasions the information has been
10 disclosed to the defense team prior to full review by the prosecution.

12 Defendant's unrelenting and overstated complaints regarding the State's alleged failure
13 to comply with Rule 15 need to be taken into proper context. The defense team has made it
14 their mission to complain and cry foul each and every time an issue is not addressed to their
15 satisfaction. They persistently point out every so-called deliberate delay, regardless of the
16 material's evidentiary value or actual significance. The State asks the Court to separate the
17 overblown complaints from reality and to not be unduly swayed by what amounts to extremely
18 exaggerated accusations regarding the State's disclosure habits in this case.

20 ***I. Richard Echols***

21
22 To address the State's failure to deliver to the defense all Bates ranges for documents
23 relied upon by Richard Echols, as the defense team so often points out, the disclosure in this
24 case is massive. As with any case of this magnitude and despite the best efforts of all parties,
25 mistakes are made. Such is the case concerning this particular information.

1 In the State's 46th Supplemental Disclosure, the defense team was notified that the
2 Bates ranges associated with Richard Echols could be found on the Updated Bates Log. An
3 Updated Bates Log is provided to the defense team every time a supplemental disclosure is
4 made. The information was compiled and added to the State's Updated Bates Log on January
5 29, 2010. A computer error, mostly likely caused by operator error, occurred and the
6 information was lost. As with many computer errors, how the information was lost remains a
7 mystery, but the fact is, the State believed this information was properly delivered to the
8 defense team with the State's 46th Supplement Disclosure dated January 29, 2010, and only
9 learned of the omission at the hearing on Friday, February 19, 2010. The State worked
10 diligently over the weekend to re-compile the information and provided it to the defense team
11 on Monday, February 22, 2010.
12

13 The State acted in good faith to comply with the Court's orders. This failure was not
14 intentional; it was a simple mistake. The Court should bear in mind that ALL of the
15 information relied upon by Mr. Echols had been disclosed; all that was missing was the
16 identification of the specific Bates ranges. This accidental omission should not be the basis for
17 the very serious sanction of precluding the testimony of Richard Echols or dismissing the death
18 penalty. This portion of the State's Supplemental Memorandum addresses the Defendant's
19 Supplemental Motion to Preclude Testimony of Richard Echols filed February 24, 2010.
20

21 **II. Cell Phone Tower Maps and Sgt. Sy Ray**
22

23 The defense seriously overstated the State's delay in disclosing these maps, stating they
24 received no information until the 46th Supplemental Disclosure dated January 29, 2010. This is
25 incorrect. The maps were disclosed on January 7, 2010, in the State's 44th Supplement. (See
26

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Bates Ranges 16449-16454.) The associated supplemental report was approved and disclosed
2 on January 29, 2010. (See Bates 17781.)

3 Based upon recent filings, the State anticipates that the defense will attempt to impugn
4 James Knapp's character and claim that he either was or could have been Carol's murderer.
5 The information regarding the placement of the cell phone towers will be necessary to rebut the
6 defense's allegation that James Knapp's alibi, that is that he was with his son at his ex-wife's
7 house at the time of Carol's murder, is untrue. The State has evidence that at 7:58 p.m. on July
8 2, 2008, Knapp made a cell phone call that hit or "pinged" off a tower located at 1011 Country
9 Club Drive in Prescott. This tower is approximately 500 feet as the crow flies from Knapp's
10 ex-wife's house. The State will offer this evidence to validate Knapp's alibi.
11

12 Sgt. Sy Ray from Gilbert Police Department was identified as a witness in the State's
13 17th Supplemental Disclosure dated June 5, 2009. Originally, he was not listed as an expert
14 since his involvement in this case up to that point was limited to the application of BlueStar, a
15 product used to identify blood stains not visible to the human eye. Sgt. Ray is also an expert on
16 the relationship and interaction between cell phones and cell phone towers. When it became
17 apparent that validation of Knapp's alibi would be required, the State listed him as an expert
18 witness in the 47th Supp dated February 18, 2010. That disclosure mistakenly listed the topic
19 about which he would testify as BlueStar. An Amended Supplement, which identified the
20 correct topic of his anticipated testimony, was filed the following day.
21
22

23 Prior to the defense team's announcement that it was, in essence "going after" James
24 Knapp, the State did not expect that absolute validation of Knapp's alibi would be required.
25 Clearly, this is a new development which requires new disclosure, new witnesses and new
26 experts. On Monday February 23, 2010, the State sent Sgt. Ray YSCO Evidence Item 37 for

1 him to begin his review. This is the only evidence Sgt. Ray has received thus far. All other
2 communication with Sgt. Ray has been oral. No supplemental disclosure has been filed since
3 February 23 so this is the first notice the defense team has regarding this information; however,
4 this same information will be included in the next supplement and the State will disclose all
5 documents related to Sgt. Ray's findings as soon as they are received.

6
7 It is evident that with regard to Sgt. Ray and the cell tower maps, the State is in
8 compliance with *Ariz. R. Crim. P.*, Rule 15.6(a) which mandates that each party continue to
9 make additional disclosure of new or different information as it is discovered. There is no
10 disclosure violation regarding the cell tower maps or the identification of Sgt. Ray as a rebuttal
11 expert. Sgt. Ray should not be precluded from offering his testimony regarding the
12 relationship and interaction between cell phones and cell phone towers.

13 ***III. Crime Scene Diagram***

14 Again, the defense has overstated the lack of or late disclosure of crime scene diagrams.
15 Crimes scene diagrams have been disclosed in:

- 16
17 1) State's Initial Disclosure in November of 2008 (Bates 123-137),
18 2) State's 9th Supplemental Disclosure dated January 26, 2009 (Bates 2555-2557),
19 3) State's 20th Supplemental Disclosure dated June 22, 2009 (Bates 6444 - 6445, and
20 4) State's 46th Supplemental Disclosure dated January 29, 2010 (Bates 17847-17851).

21 The latest disclosure is a crime scene diagram prepared from previously disclosed
22 measurements which were made at the crime scene in July of 2008. The diagram was not
23 prepared in July 2008, as argued by the defense.
24
25
26

1 These measurements were made in July of 2008 and disclosed. Clearly, Defendant has
2 failed to show he has been harmed or prejudiced by the additional disclosure of the diagram
3 made from these measurements; Therefore, a sanction is not warranted or appropriate.

4 ***IV. Defendant's Statements***

5 Disclosure of Defendant's jail calls is on-going and consistent. In YCSO DR
6 Supplement 126, (Bates 17804-17813) approved and disclosed on January 29, 2010, in the
7 State's 46th Supplemental Disclosure, Det. McDormett complied summaries of several jail calls
8 made by Defendant. Each summary is identified by who was called and the date and time of
9 the call. Out of the over 2700 calls made, these are the only calls to be summarized and
10 specifically referred to in any supplemental report. This fact clearly identifies the calls'
11 significance to the State's case.
12

13 In both its Amended Response and at a hearing on February 19, 2010, the State
14 specifically identified these calls. The defense complains that these actions were not
15 satisfactory, that the calls were not identified with sufficient clarity, therefore preclusion is
16 warranted. If a disclosure violation occurred regarding the jail calls, it was not so flagrant as to
17 warrant preclusion of this evidence. As to Defendant's other statements, these have been
18 properly identified and no other action on the State's part is required.
19

20 ***V. Shoe Prints and Eric Gilkerson***

21 As the Court is aware, most of the shoe print evidence in this case is of very poor
22 quality. In fact, the Court has already ruled that a *Willtis* instruction regarding this evidence is
23 likely. When the information on the shoe prints was submitted to the DPS lab, no
24 identification was made regarding shoe type or even a range of shoes sizes that might have
25 made the print. In October of 2009, the FBI was contacted to see if they could assist. The
26

1 State did not know if the evidence was of sufficient quality as to elicit any meaningful opinion.
2 Eric Gilkerson, an FBI analyst, stated he could not give a size, but stated it appeared to be
3 within a common range. Mr. Gilkerson advised that the print may have been made by a La
4 Sportiva brand shoe that was possibly part of the hiking shoe/boot category. In November
5 2009, the State received a tread pattern from the FBI. This was compared to the photographs
6 taken from the scene and it appeared to the detectives that the treads were similar.
7

8 Under *Ariz. R. Crim P.*, Rule 15.1(b)(8) and *Brady v. Maryland*, 373 U.S. 83, 83
9 S.Ct.1194 (1963), the State is required to disclose all plainly exculpatory evidence in its
10 possession. This limited information was neither inculpatory nor exculpatory in nature; at the
11 time of Gilkerson's report in November of 2009. The only information the State had at that
12 point was that the shoe print may have been made by a certain type of shoe. While that type of
13 shoe was not found in Defendant's possession, there was no evidence which would have
14 excluded Defendant from being the person who owned the shoe and the person who made the
15 prints. The State was still trying to evaluate this evidence.
16

17 At that point, the search of Defendant's credit card transactions was broadened to
18 include the purchase of La Sportiva brand shoes. On January 27, 2010, the State found
19 evidence that in April of 2006, DeMocker had purchased two pairs of La Sportiva shoes from a
20 vendor in Colorado. All of this evidence was disclosed on January 29, 2010, literally within
21 hours of its discovery. Further examination and comparison of the photographs and the La
22 Sportiva shoes is currently underway and the State will disclose any documents, reports, disks,
23 etc., as soon as they are received.
24

25 This is newly discovered evidence and as previously stated, with the discovery of new
26 evidence comes the need for additional witnesses and experts. Clearly there is no disclosure

1 violation on this issue. Defendant's request to preclude the evidence of Defendant's purchase
2 and any related witnesses, expert or otherwise, should be denied

3 ***VI. UBS Evidence***

4 The State was unable to gain access to the data contained in the Blackberry due to
5 password protection and firmly believed any information within the device was simply
6 unobtainable. After numerous contacts with UBS personnel, the State learned that the data
7 from the Blackberry was retained in the business's main computer servers located in
8 Weehawken, New Jersey. The subpoena sent to UBS was crafted after consultation with UBS
9 counsel in New Jersey, Anthony Raccuglia.

10
11 The subpoena was necessitated because incorrect passwords were provided by the
12 Defendant for the Blackberry. UBS counsel Raccuglia informed the State that the Blackberry
13 worked through a server in New Jersey that was controlled by UBS. The Blackberry was also
14 linked to Defendant's office computer. The result of the subpoena was that all 14,000 emails
15 would be obtained and would not be separated between the Blackberry and the business
16 computer. Furthermore, no differential was made by UBS between personal and business
17 emails even though only personal emails were sought. UBS had to screen all 14,000 emails for
18 confidential and proprietary information. Finally, UBS produced the emails, after much
19 prodding on Saturday February 13, 2010. The State promptly disclosed all these emails almost
20 immediately upon their receipt. Any delay in this disclosure was occasioned by Defendant or
21 UBS.
22
23

24 The aforementioned information addresses Defendant's Motion to Preclude Late
25 Disclosed UBS Evidence dated February 24, 2010.
26

1 **VII. Gregory Cooper**

2 Gregory Cooper is a Criminal Behavioral Analyst. On February 18, 2010, the State
3 provided Mr. Cooper with the following:

- 4 1) Photo disks C, F1-F3, G1-G2, L, P, Q, R, S, T, U and V,
- 5 2) Evidence disks 7, 27, 32, and 35,
- 6 3) All diagrams pertaining to the Bridal Path residence (See Item III. in this document
7 for Bates ranges),
- 8 4) All blood spatter reports (Bates 10604-10610),
- 9 5) Autopsy and skull reconstruction reports (Bates 548-568, 3646-3648),
- 10 6) YCSO DR 08-029129 – Supps 2, 3, 4, 5, ,7 10, 12, 14, 17, 24, 35, 36, and 41.

11 Mr. Cooper will examine this information and issue a report which will be disclosed as
12 soon as practicably possible after its receipt.

13
14 Once again, the defense team's complaint regarding this expert witness is overstated.
15 The need for a witness in Mr. Cooper's field has just recently been recognized and, as is
16 evidenced by the very quick replacement of the State's previous expert, Susan Kossler, the
17 search for such a witness is new. In an attempt to make timely disclosure, Ms. Kossler was
18 disclosed as soon as the State believed she might be called but before it had confirmed her
19 availability.

20
21 The timing of this disclosure does not prejudice Defendant. The defense team will
22 have adequate time to review Mr. Cooper's report and to schedule an interview with him. Late
23 disclosures such as this, while certainly not encouraged, are anticipated in complex cases such
24 as this. *Ariz. R. Crim. P.*, Rule 15.6(a) mandates continuing disclosure. Rule 15.6(b) provides
25 that it is only where a party anticipates disclosure within 30 days of trial, that special
26 announcements should be made. Mr. Cooper's expert testimony should not be precluded.

Office of the Yavapai County Attorney
255 E. Gurley Street, Suite 300
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 **CONCLUSION:**

2 *Ariz. R. Crim. P.*, Rule 15.6(a) mandates that each party has a continuing duty to make
3 additional disclosure of new or different information as it is discovered and it is clear that the
4 State is doing its level best to comply with that mandate.

5 This Court should closely examine Defendant's unrelenting and overstated complaints
6 regarding the State's alleged failure to comply with Rule 15, separate the overblown
7 complaints from reality and not be unduly swayed by what amounts to be extremely
8 exaggerated accusations regarding the State's disclosure habits in this case. Defendant's
9 numerous requests for preclusion of witnesses and evidence should be denied.

10
11
12 RESPECTFULLY SUBMITTED this 26 February, 2010.

13
14
15 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

16
17 By: 

18 Joseph C. Butner
Deputy County Attorney

19
20 COPIES of the foregoing delivered this
21 26 day of February, 2010 to:

22 Honorable Thomas J. Lindberg
23 Division 6
Yavapai County Superior Court
(via email)

24 John Sears
25 511 E.. Gurley St.
Prescott, AZ 86301
26 Attorney for Defendant
(via email)

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Larry Hammond
Anne Chapman
Osborn Maledon, P.A.
2929 North Central Ave, 21st Floor
Phoenix, AZ
Attorney for Defendant
(via email)

By: 